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Andreae, Percy

When the majority is King, and When a minority...

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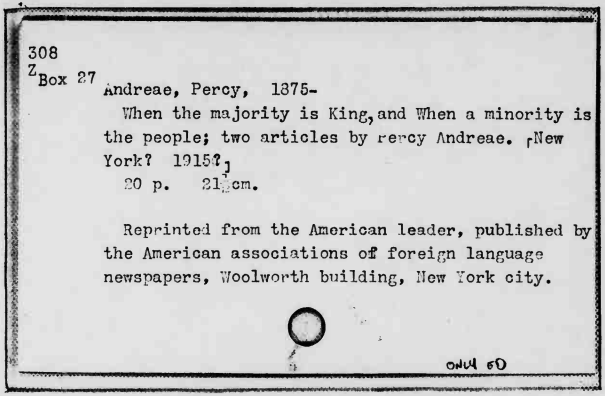

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When the Majority is King

and

When a Minority is the People

Two Articles by

Percy Andreae

Reprinted

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When the Majority is King

[EDITORIAL NOTE. In our last issue, we referred editorially to Mr. Andreae's noteworthy address, delivered at Cleveland on the 22d of July, on the subject, "The Need of a National Liberty Day," and we spoke of his energy in defending the cause of "Personal Liberty" wherever he could strike a telling blow. We recalled to our readers' minds also the masterful address on the same subject, delivered before the American Association of Foreign-Language Newspapers, Inc., at its last annual banquet in New York, on the evening of February 7th. This address, which created a profound impression among thinking men in all parts of the country, was printed in our issue of February 12th. In our issue of June 11th, we published a number of opinions of that address from the press and from prominent educators, legislators and publicists. The article of which we here print the first part is a fitting and clinching completion of that notable address.]

As long as human society has existed, the opinions of men regarding that which is most vitally essential to human morals and human happiness have probably differed. Perhaps fortunately so, for divergence of views leads to discussion and exchange of thought, and there lies the root of all human progress. The social fabric we live in to-day has not been built up by the thought, the opinions, or the achievements of one man, one set of men, or one race of men. It is the result of the compromise between many human minds and many human views, and the possibility of such compromise is conditioned upon two essentials, viz.: respect for the opinion of our neighbor, however fundamentally that opinion may differ from our own, and the recognition, now universally conceded, of the equal rights of all men.

In these modern days, when the principle of the rule of the majority is recognized throughout the civilized world as the most equitable, if not the most perfect form of government, it is well to bear this fact in mind. It is scarcely necessary to say that, unless this rule of the majority were subject to certain well-defined limitations, it would prove as tyrannous in principle and as destructive of human rights and human happiness as that most despotic form

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of ancient government which is based on the so-called divine right of kings. Yet these very limitations, so wisely imposed upon our modern form of government by our forefathers, are to-day in danger of being all but totally removed at the instance of men who are putting forth the strangely delusive doctrine that the needs of human society demand the sacrifice of individual human liberty.

Startling as the assertion may appear, it is none the less true that the acceptance of this doctrine would mean the first step towards a general relapse of mankind into the state of barbarism from which it has emerged. The doctrine is based, in fact, upon an obviously false conclusion regarding the true evolution of human society; for society was manifestly not formed to restrict or curtail individual liberty, but, on the contrary, to establish and protect it.

The notion of some men that the life of the savage is an example of perfect and unrestricted freedom, is a complete fallacy, as a mere glance at man in his primitive state will prove. The savage human has not even the most elementary sense of individual liberty. He has only one conception of human right, namely, that of superior might. Hence, where the savage state prevails, the strong enslaves the weak, only to be himself enslaved by the stronger, until the strongest establishes his paramount power and makes his individual will the supreme law for all.

This condition is not only irreconcilable with the exercise of individual liberty, but is correspondingly incompatible with any sense of that which we call criminal, on the part of those who live in it. The human mind, indeed, has developed only one conception of crime, namely, the violation of human right, and the supreme right of man is liberty. Consequently, the savage, knowing no liberty, knows no crime. It is true, he kills, burns, and robs, whenever opportunity offers. But these acts are not the exercise of individual liberty, because they are committed as a matter of might, not of right. And, inversely, when the consensus of human opinion constitutes such acts crimes, it is not because they have come to be regarded as an undue exercise of individual liberty, which requires restraining, but because they are recognized as an undue violation of individual right, and as such to be suppressed.

There is nothing strange in all this. The history of human

progress is the evolution of the sense of individual human right. The principle underlying our common law, as stripped of its obsolete feudal and other medieval excrescences, is the protection of this right of the individual, not its restriction for some fancied benefit to accrue thereby to the community. The individual at no time claimed the right, either expressed or implied, to murder, burn, or steal. When he committed these acts, he did so relying purely upon his individual ability to defy the attempt at vengeance or reprisal on the part of those whom such acts injured. When law, therefore, constituted these acts crimes, it was not because a majority of men agreed to forego a right to murder, rob, or burn, and forced an unwilling minority to follow their example, but because *all* men demanded the right of protection against murder, robbery and arson, and such protection was only rendered possible by each, without exception, extending it to the other.

There is no record in the history of mankind which would indicate that these laws were established otherwise than by the common consent of all men, nor does their occasional violation at this advanced stage of our civilization imply that there is a single individual among us who regards them as an infringement of his liberty of action. Even the murderer, the thief, and the incendiary themselves acknowledge their necessity, and for obviously selfish reasons.

Law, then, if it conforms to our established notion of the equal rights of men, expresses, not "a rule of action which is prescribed by some superior, and which the inferior is bound to obey" (Blackstone), but essentially a contract, a compact for mutual protection between individuals, and its force and effectiveness are conditioned upon the completeness of the mutual character of that protection. This conception of law indeed is unconsciously so ingrained in the human mind that it has become part of our language itself. We do not say: "all men are subject to the equal restriction or constraint of the law." We say: "all men are entitled to the equal protection of the law." And the distinction is significant as showing that men intuitively feel that the purpose of law is to protect individual right, not to restrict or annul it. It would be, and is, indeed, impossible for men to agree upon constraint or annulment of right, but all can agree upon its protection. Hence laws

which force protection upon men who do not want it become purely restrictive, and as such usually fail, because the compact underlying them is not based upon a mutual consideration; in other words, because they exact the performance of an obligation upon which one party insists without giving a consideration which the other party desires.

When some men, therefore, speak of the "Social Contract" as an instrument by virtue of which the individual yields up certain liberties in consideration of certain benefits he receives from the community he lives in, they do not state the case accurately.

Men had no liberties before the community was formed to establish and protect them. The savage, for instance, is not free to roam at large, as so many suppose. He can only do so if his stronger fellow-savage permits him. Our social conception of liberty is that all men, weak or strong, have equal rights, which they agree, for a common selfish reason, to guarantee to each other. Hence, the community, which is merely an individual many times multiplied, has no benefit whatever to bestow apart from the personal liberty of that individual, and, since that liberty is inviolate, the community cannot take it from one and give it to others, nor deny it to some for the alleged good of all, without defeating the very end for which the community was established.

The guaranty of equal rights simply involves the obligation of equal duties to secure those rights, and the community has been created as the instrument through which both are carried out. It has no right, nor should it exercise the power, to alter either the guaranty or the obligation, for the one is the perfect complement of the other. In other words, the obligation to respect my neighbor's rights implies in no sense a restriction of my own. On the contrary, if I commit an act which infringes the rights of my neighbor, I am not exercising my own rights, but violating or jeopardizing them, because my rights and my neighbor's are coextensive and interdependent.

Let me illustrate.

The acquisition of wealth is an exercise of individual right, because it neither interferes with nor abridges the equal rights of all men to acquire wealth. The use of wealth, however, to deprive other men of the equal facilities to acquire it is an exercise of

individual might, which is a violation of right, and, therefore, properly becomes a matter of community control.

Again, I claim the individual right to speed my automobile to the bent of my foolish desire. I shall exercise that right with perfect propriety, as long as I do so on my own premises. But if I exceed the speed limit on the public thoroughfare, I interfere with the right of my neighbor to protection of life and limb, and since I claim the same right as he, I cannot violate his right to that protection without at the same time forfeiting mine. I want no protection against my own folly, nor am I willing, as a matter of equity, to concede to my neighbor the right to be protected at my expense against his folly. It is only in so far as his folly affects me and my folly affects him that he and I are equally interested and conclude to enter into an agreement for mutual protection, which we call law.

This manifestly does not involve the abrogation or sacrifice of personal right, but, on the contrary, it involves its solemn recognition, and the community is there to see that the contract to mutually recognize it is duly fulfilled by all parties to it.

The fault, then, which is at the root of all purely restrictive laws lies in the fact that they are enacted as a result, not of a common desire for protection on the part of all men, but of a desire on the part of one class of men to protect another class that neither desires nor appreciates the protection. The question whether that protection may be morally, or otherwise, good for them or not, has no bearing upon the matter. However laudable or desirable the object of a law may appear, its primary requisite is effectiveness, and that effectiveness depends upon the mutual consent of those whose actions it is to control. Autocratic rulers have learned this to their cost, and the lesson which kings have learned in the past is in store for majorities in the future, if they transgress the limits with which nature has circumscribed their power. For nature is superior to law, and has never yet failed to demonstrate its superiority.

Our latter-day prohibitionists afford the strongest proof that this fact is recognized, even by those who are to-day promulgating the doctrine that individual man must yield up what we call his personal liberty for the benefit of what a certain class of men—

say, a majority—consider to be the need of the community at large. The prohibitionist believes—no doubt sincerely—that the use of alcoholic drink is the root of all human evil. This being his creed, the obviously honest way to endeavor to remedy the evil would be to forbid the use of such beverages, and punish all who have them in their possession. But the prohibitionist knows too well that the millions who assert the right to indulge in stimulants, because they see in that indulgence no interference on their part with the rights of any other man, would rise as one multitude in protest against such a law. So the prohibitionist resorts to a subterfuge, and, while expressly admitting the right of men to drink, deprives them of the opportunity to exercise that right by forbidding the manufacture, sale and distribution of drink.

But is there any difference between destroying the opportunity to exercise a right and destroying that right itself? To confine a man in a vacuum and say that you are not taking from him the right to breathe, is an absurdity. Yet it would be no different from confining a man in a place where he can obtain no drink and saying to him that you are not depriving him of the right to drink.

This is the fatal insincerity of the prohibitionist, and it is here where the majority that does his bidding oversteps the limits with which nature has circumscribed its power, and the result is, as in all such cases, confusion, resentment and open defiance of the law.

It may be freely admitted that some laws directly restricting the right of the individual have been enacted with some measure of permanent success, but such laws have invariably related to rights the exercise of which the individual considered too unimportant to insist upon, and they were therefore generally tolerated, or accepted without resistance. But their success does not make them right. On the contrary, the fact that the liberty they restrict is considered not worth while contending for constitutes their peculiar danger, inasmuch as they establish a precedent for the enactment of other laws affecting liberties far more deeply and generally cherished.

Nowhere has this fact been more clearly stated than in the following words of our Declaration of Independence: "All experience hath shown that mankind are more disposed to suffer

while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed." Needless to say, the evils here referred to are the evils of tyrannical government.

I know of no statute which more strikingly illustrates in itself, both the effectiveness of law based upon common consent and the ineffectiveness of law based upon the mere arbitrary ruling of a majority of men, than that which is known as the Sunday law in this country. In so far, namely, as this statute establishes Sunday as a day of rest, it is universally accepted, because all men realize the need of release from labor on one day in the week, and unless each would concede to the other the opportunity to rest on that day, none could safely exercise the right to do so. In other words, the great majority of men only transact business on Sunday because they are forced to do so by their competitive fellow-business men. All, however, including the few men whose mere greed of gain causes them to labor on Sunday, experience the need of a respite on one day in the week; hence the agreement, not to take from each other the right to open their place of business on the Lord's day, but to protect for each other the right to rest on that day.

Now, rest implies recreation, and there is where the Sunday statute produces the inevitable clash, for, wherever it prevents men from indulging in the recreation they desire and consider themselves entitled to, it acts not as a concession but as a deprival of right, and in consequence becomes largely inoperative. Men realize, in short, that such parts of the law which forbid, for instance, the playing of games, or the opening of houses of amusement, public museums and places of public resort on Sunday have not the object of preserving the right of the individual to rest, but aim to force men generally to observe the Sabbath according to the religious views and conceptions of a certain section of the Christian church, and the law therefore becomes ineffective except in those localities where the followers of these particular religious denominations are in a sufficiently large majority to coerce the rest of the community into obeying it.

This is exactly the rule by might, and not by right, which is peculiar to man in his savage state, a condition from which he has been steadily endeavoring to rise, and into which a certain element

of modern society is to-day—unwittingly, no doubt—endeavoring to return him. Nor does it matter whether such might is exercised by one man, as, for instance, an autocratic ruler, or by a body of men, as, for instance, a majority. It is equally subversive of human rights, and therefore productive of evil. Men suffered from it under one-man rule, largely because they did not realize their power to resist it. Men suffer from it under majority rule, either because they are too indolent or indifferent to use the power they possess to destroy it, or because they are too ignorant to understand the principles which it violates, and which it is every man's duty, in his own interest and that of his fellows, to maintain and defend.

There is, in fact, no more divine right vested in majorities than there is vested in kings, and those who assert that the complex character which our modern society has assumed demands a readjustment of our notions of individual liberty merely prove their utter misconception of the fundamental principle from which human society took its inception, and which alone has made its advance to its present stage possible. It therefore behooves men who aspire to be our lawgivers, as well as those who elect them, to constantly bear in mind that our present-day government cannot, with due deference to this fundamental principle, the equal rights of all men, properly concern itself with anything but the detailed application of that principle to the complex conditions of modern society. Wherever it seeks to accomplish more than this, it either attempts to alter, or it violates, that principle, with the consequence that the laws it enacts become laws based upon might, not right, and as such either tyrannous or nugatory. For might is evanescent, while right endures forever.

If men would stop to consider why it is that human beings only found it possible in a corporate capacity to secure and protect individual liberty, they would discover that the reason is as transparently evident to-day as it was at the very beginning of human society. The fact is, humiliating as the admission may be, that we are individually by no means so far removed from the savage state as some of us are led to believe. Individual man, even at this day, let his station be ever so humble, is by instinct a tyrant, with little true conception of right, excepting as it pertains to himself. It is

only when he has been educated to see that his own rights are co-extensive with, and their security and maintenance interdependent upon, the rights of his fellow-man; in other words, that the preservation of his own liberty is conditioned upon his unqualified recognition of the equal liberty of all men, that his selfish, tyrannical instinct yields to his equally selfish sense of expediency, and makes way for the spirit of compromise, which results in the agreement for the mutual protection of individual right that finds its expression in human law.

There was never a time when the realization of this fact by men of all ranks and grades was of such supreme importance as it is in this present era of our so-called enlightenment and complex social conditions.

When a Minority is the People

Paradoxical as it may sound, while majority rule seems to us to be the form of government most representative of the people, the true fact is that the voice of the people invariably speaks through the minority.

The reason is very simple. Experience has taught us that the liberty of the individual is contingent upon the equal liberty of all men. Government, however, on whatever basis it may be established, implies a ruling body and a body ruled. No matter how the ruling body is constituted, whether it be permanent or temporary, hereditary or elective, the function of government is inseparable from the exercise of power, and power is the antithesis of freedom. The instability of party rule, which is the characteristic feature of our republican form of government, is traceable primarily to this very antithesis. The minority of to-day becomes the majority of to-morrow, only, in its turn, to hear the voice of the people speak through another minority and oppose the power through which the newly established majority proceeds to impose its rule upon the community at large. Thus the same course is run over and over again, and the body ruling and the body ruled are in constant conflict and opposition.

It would seem, then, as if there were a decree of nature against any permanency or stability in human affairs. Yet this is not so. It is through the very conflict between the body ruling and the body ruled that we have obtained some of the best results in our human government. In England, for instance, where the minority is known in parliamentary language as the opposition, it has become a common saying that the surest guaranty of good government lies in the strength of the opposition.

Whether this be so or not, it is certain that all substantial progress in representative government has been marked by the gradual development of a minority into a majority. In our imperfect and somewhat blundering fashion, therefore, we manage, after

all, to evolve some order out of chaos, and the saying that the people rule, while in some respects a mere figure of speech, is not so in all respects. The people *do* rule—ultimately, and the reality of this rule of the people is best exemplified by the fact that only those laws prove to be stable and permanent which have the approval and the consent of *all* men.

This is true, no matter whether the governing power be exercised by one man or by many. The difference, in fact, in so far as it bears upon the actual individual, is not as great as some believe. Government, even though established by a majority, must necessarily pass into the hands of a few men, with all the power which the function of government implies. In our country, it is this majority which elects the legislative and executive bodies, and vests in them the authority to enact and enforce laws. It also, in many cases, elects (unfortunately) the judges, among whose functions is that of deciding whether such laws as the governing body enacts conform to the fundamental principles of individual human right which are embodied in our Constitution, and are known as organic laws. These organic laws represent presumptively the definitely ascertained will of *all* the people, and for that reason have been placed beyond the power of a mere majority to abrogate or alter.

The system, then, on the face of it, seems perfect. Yet is it so very different from what we call monarchic institutions? The rights of the people, though possibly not quite the same, are as real and in some cases as well defined under the rule of a king as they are under the rule of a majority, and they are as liable to infringement in the one case as in the other, only the people at large do not realize it. The idea of majority rule, indeed, seems to possess some magic charm which disarms all suspicion of tyranny, and blinds the individual to the eternal truth that only by the most jealous vigilance can the liberty of man be protected against the power of man.

How many of us, who sing blithely of the land of the free, do not realize that it is not because our country is subject to the rule of a majority that its citizens are, or ought to be, free, but because the rule of the majority is subject to the rights of the minority. That these rights of the minority happen to be the rights

of the whole people renders it all the more important for us not to allow ourselves to be lulled into the belief that no effort on our part is required to secure them against encroachment.

If it had not been considered within the range of possibility, for instance, that the right of all men to life, liberty and property might one day be contested by a perverse majority of citizens, there would have been no reason to safeguard that right so carefully in the Constitution of our country. That Constitution, in fact, while purporting to establish the inalienable rights of the whole people, in effect merely protects the rights of the minority of the people against the aggression of the ruling majority, and the very fact that it does so warrants us in saying that a minority whom a ruling majority of citizens attempts to deprive of such established rights (no matter whether the majority deprives itself of those rights at the same time), is as justly termed the people as if it were a whole nation rising against an oppressive ruler calling himself king. For, in an absolute monarchy the whole people are the minority, while the king is the majority. The only apparent difference, in this particular, between representative and monarchical government is that in the former case the ruling body is subject to dismissal by the people, and in the latter case the ruler is not. But even this difference, on closer inspection, proves to be purely theoretical, for the reason that, since representative government is established by a majority, it is only by a majority that it can be dismissed, and a majority is manifestly no more likely of its own accord to relinquish its power than a king is to relinquish his.

It is in all cases, then, the minority that must of necessity act as the protector of the fundamental rights accorded to the whole people, and it is therefore properly representative of the whole people whenever it stands in defense of those rights. Nor is there any exaggeration in the assumption that, in our enlightened age, a minority may be called upon, and ought, to take such a stand. Man, in all ages, has been subject to fitful impulses, which have caused him periodically to deviate from the course marked out for him by the accumulated experience of generations and seek a short-cut, by way of law, to the final goal he is destined to reach, if at all, by education. That we are to-day in the midst of such a period is scarcely to be doubted. In fact, the particular impulse which is

characteristic of our present age, and which, fed by certain aggressive though well-meaning reformers, has seized large numbers of the community with almost epidemic force, is nothing less than to subvert the entire foundation upon which we have so far erected our social fabric, by assuming that human society was not created for the benefit of individual man, but that individual man was created for the benefit of human society. Which means, of course, what many of those who unreflectingly subscribe to this doctrine do not fully realize, that individual man has no rights inherent in him by nature, but only such rights as society, ruled by a majority, may concede to him.

It is not necessary to enter into an academic discussion of the question which of the two propositions is theoretically correct. The theory of government, as advanced by *some* men (though they be a majority), is one thing, its practice, as determined by *all* men, is another, and, whether fortunately or unfortunately, it is this other upon which the success of government is conditioned.

If men were created equal, as our Declaration of Independence has it, there would be no problem of government to confront us, for majorities and minorities would be inconceivable. But they are not. Men are merely assumed by us for purposes of government to be created with equal rights, which means, if it means anything, that they have the inalienable right to their own folly and their own wisdom, and the equally inalienable right to protection against the folly and the wisdom of their neighbor.

It is idle to pretend that this is a mere theory. It is the result of the stern practical experience of ages, which has proved that all the laws of the world, backed by all the power of governmental authority, cannot make foolish men wise or wise men foolish. The fool of to-day may become the sage of to-morrow,—and vice versa, but not by social or governmental decree. Wisdom is not imparted by law, nor can folly be corrected by it.

This truth is as old as the hills, and perhaps for that reason, like most very ancient truths, more apt to be lost sight of than are others far less obvious. But though some of us may temporarily overlook or disregard it in our eagerness to advance our own pet theories of what is good for our fellow-men, it is just through

these fellow-men that we are again brought face to face with the truth, and recognize its immutability.

If all men were equal, law would be superfluous, and education, as we understand it, futile, for equal men would require no protection against each other, nor could some benefit by the example and the teaching of others. Being unequal, they have agreed, each in his own selfish interest, to submit to law, in order to protect each other from the consequences of their inequality, and to education, in order that, so far as humanly possible, the degree of their inequality may be lessened.

We have, therefore, two distinct functions which society, as constituted by individual man, has always been called upon to perform. The governmental function, which aims to prevent superior and inferior from trespassing upon each other's rights, and the educational function, which aims to bring superior and inferior to the same level of mental, moral and physical efficiency. If ever the latter function (the educational) were to be completed, the former function (the governmental) would cease automatically, for the need of human government is predicated upon the inequality of those governed. Unless this were true, there would be no meaning in the saying that the least governed people are the best governed.

It is, then, the confusing of these two functions by those in whom they are vested which has usually been the source of the differences that have arisen between the body ruled and the body ruling, for the tendency to endeavor to accelerate the slow but steady process of education by force of law is by no means exclusively peculiar to our present age. Many an autocratic ruler who has gone down in history as a selfish tyrant really committed no greater offense than that of which our majorities of to-day are so often guilty, namely, the offense of endeavoring to anticipate the slow but enduring accomplishment of education by the quicker but more transitory effect of legal compulsion. One of the most enlightened monarchs of the eighteenth century, for instance, nearly caused his subjects to rise in revolt against him by decreeing that the dead should be buried without coffins, in order that the dissolution of the body might be hastened. If a majority in our day were to order the dead to be cremated instead of buried, and

it undoubtedly has the power to do so, it is more than likely that a similar revolt would be the consequence, and for the same reason, namely, because education has not yet convinced men that the rights of all demand such a law.

This is no attempt to prove that what men are taught to do by education is always right, and what they are unwillingly compelled to do by force of law is always wrong. Probably there has been as much injudicious teaching in this world as injudicious government, and mankind has suffered from the one as much as from the other. The point is one of precedence, purely, and a moment's reflection will convince anyone that government, even in its most primitive stage, has always been the offspring of education, and not vice versa. When, for instance, kings established their power by divine right, they did so with the tacit consent of the people, who had been taught to believe, largely on religious grounds, that the kingly office was conferred upon its incumbent by a higher authority than that of man. When, in the course of history, the tendency grew to curb the royal power, it was because men had learned to realize that there is a human limit even to the exercise of divine right; and again, when monarchy was abolished and purely representative government was instituted in its stead, it was because advancing education had previously convinced the people that natural human right entitles all men to an equal voice in human government.

It is quite conceivable that education might have proceeded in just the reverse direction, but it is at least questionable whether, if it had, we should have arrived at the stage of civilization which we have reached to-day. The fact is, however, that education has not proceeded in the reverse direction, and it is this fact which we have to reckon with, not the theories of those to whom the fact may be inconvenient.

It is a strange, and, indeed, disquieting circumstance that so many of our educators at this day are to be found among those who advance the theory that government can accomplish what education alone is fitted to accomplish, or that it can accomplish it more quickly. It argues a distrust of the efficacy of education which throws a peculiar light upon the modern educator who harbors it. If a teacher, failing to inspire his class with the neces-

sary willingness to absorb his superior knowledge, were to call in a policeman to enforce that willingness, he would accomplish neither anything creditable to himself nor beneficial to those whom it is his duty to instruct. He would merely confess his own incompetency as an educator, while the policeman—well, would remain a policeman still, capable, no doubt, of swinging a club with telling force upon the outer surface of a recalcitrant pupil's cranium, but scarcely with any inspiring effect upon that which is inside it. Yet it is that which is inside it that education is intended to reach.

Apply the example to the general proposition before us. When our educators, failing to impress the people they are called upon to instruct with the necessity of observing certain rules of personal conduct or following a certain prescribed code of morals, appeal to the governing power to step in and accomplish the desired end by law, the result is precisely the same. True, the club of the law is undoubtedly capable of descending with telling force upon the outer surface of the people's cranium, to the extent even of depriving them of the power of physical resistance, but it is not capable of conveying any moral conviction to the mind inside, without which conviction the effect of the law's club will be but of a temporary nature. In other words, a law which does not carry with it the convincing power that it is right, even though physically enforced by the club of the majority, is as practically ineffective as the policeman in a schoolroom. Everyone admits, of course, that the best of laws without the power to enforce them would be an absurdity. But a law which requires one-half of the people to compel its observance by the other half is, as experience has abundantly shown, a still greater absurdity.

Such laws originate in our modern times almost invariably in the attempt of the governing power to usurp the function of the educator, and since men's notions of their rights, upon which human government is founded, are, whether right or wrong, the product of education, it is obvious that, when government thus essays to encroach upon the function properly belonging to education, it is arrogating to itself the very power that is intended to direct and control it.

Our government, which derives its authority from the people, has not been invested with the power to determine what shall be

the individual rights of men. This power has been specifically reserved to themselves by the whole people, and until the whole people have learned to change or modify their recorded views on the subject, the government, no matter by how large a majority established, is bound to shape its acts in strict accordance with those views, or it will violate the contract upon which it is founded.

That contract stipulates equal liberty and equal protection for all men, which means that no man can demand a liberty which is not possessed equally by every man, nor receive a protection, however much he may seem to need it, that merely extends to his own person, and not, through that person, to the community at large. In other words, no man can ask anything of law for his sake alone, nor impose anything by law upon others for their sakes alone, without exceeding the rights conceded to him by all the people.

As an illustration in point, for instance, compulsory vaccination would be a flagrant violation of this established principle of individual right, if it merely aimed to protect the individual himself against the ravages of a deadly disease. But it does not. It aims to prevent the individual from becoming a source of deadly contagion to all other individuals. A man, if he choose, may court death, but he may not endanger his life to the peril of all men's lives. The law against suicide is for this reason a monstrosity. It could scarcely be more so, indeed, if it subjected the would-be suicide to the penalty of death. A law, in short. which attempts to forbid what it cannot prevent is not only wrong in principle, but absurd in fact.

It is notorious that our statute books at this day literally swarm with just such enactments, and they are the result, either of crass ignorance of the most ordinary principles of human government on the part of our legislators, or, worse still, of their truckling to the imperious demands of theorists who are either as ignorant as they, or who have made themselves a power in political life for the express purpose of pitting their own peculiar conception of human right against the wisdom and experience of all ages. It is, in fact, not because the governing power is arrogating to itself the function of the educator, but because the educator is seeking to assume the function of government, that this

modern departure from all established principles of government has become so great a menace to the community at large.

It would scarcely be possible to cite a more instructive example of the effect of this merging of the educational function in the function of government than that which is afforded by the attempt on the part of a certain class of modern educational reformers to enforce the purely individual principle of abstinence from certain indulgences common to the people at large by act of law. That these attempts, wherever temporarily successful, have been made so by the grossest misuse of the power of a majority against the rights of the minority, is best evidenced by what is known in this country as the prohibition movement, which has resulted in dividing the entire nation, not only socially and politically, but racially and religiously, into two violently hostile camps.

It is the theory of those who foster this movement that it is necessary, in the interests of human society, to protect all men by law against the desire or the temptation to drink, because a certain percentage of men are liable to indulge the habit to excess, and thereby become useless or unproductive members of the community. Now, if the effects of this indulgence were not only equally dangerous to all, but at the same time contagious or communicable, all men might become equally interested in seeing the habit eradicated. But they are not. An intoxicated man may be a very unpleasant person to meet, or he may fail to provide for his wife, who married him in the mistaken belief that he would become the family bread-winner, just as she might have married a man who proved too lazy to work, or who developed a vile temper which caused him to ill-treat her. But intoxication is not contagious or communicable. On the contrary, contact with a drunken man acts upon others more often with deterrent than with alluring effect. Hence men who know that the pleasure of drinking can be indulged in by them without any fear of incurring a dangerous infection or transmitting it to others, regard the protection which the prohibitionist claims he is extending equally to all men as, on the contrary, a concession of individual protection to some men at the sacrifice of the right of all.

This is one fatal flaw in the prohibition theory. But there is another. If the habit of drinking stimulants were traceable to a

virus, which is liable to develop in the human system, as in the case of smallpox or tuberculosis, the law might, by sheer exercise of the physical force wielded by a majority compel all men to be inoculated against the virus, even though the disease it produced were not contagious. But human science has so far discovered no such virus, nor has any system of law or process of legal inoculation been devised that will effectively destroy the appetites and desires of men. Prohibition, therefore, not only violates the solemn guaranty of individual right which forms the very basis of our American Constitution, namely, the guaranty of equal liberty and equal protection for all men, but attempts to forbid what it cannot prevent, and is for this reason one of the most pernicious products of the modern reform theory.

It is almost pathetic to reflect that, in a country like ours, where every man, through his vote, contributes his share towards the government of the nation, so few should possess even the most rudimentary knowledge of the fundamental principle upon which that government was established, and that, in consequence, so many remain totally blind to the grave danger of permitting even the slightest infraction of that principle by those whom they elect, not to rule the community, as some erroneously suppose, but merely to perform the governmental function on behalf of all of its members.

If the people are sovereign—and few will have the temerity to deny that our constitution intended that they should be—then the majority is merely a viceroy, and a viceroy is appointed, not to exercise the sovereign power, but only to perform those sovereign functions which the sovereign himself is not able to perform in person. The moment a viceroy successfully usurps his sovereign's power, the sovereignty of the latter is a thing of the past, even though he may remain king in name.

And so it is with the sovereign people. The function of the majority is purely viceregal, and while the majority performs that viceregal function, the minority becomes the guardian of the people's sovereign rights. Thus the answer to the question implied in the words: "When a minority is the people," is clearly indicated. A minority is the people, when the majority is a king.

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